Local Union No. 3 (White Plains), International Brotherhood of Electrical Workers, AFL–CIO *and* Wayne Hayward *and* Christopher Kulers *and* Michael Conner. Cases 34–CB–2179, 34–CB–2246, and 34–CB–2299

August 28, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On January 13, 2000, Administrative Law Judge Michael A. Marcionese issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed cross-exceptions and a supporting brief, as well as an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local Union No. 3 (White Plains), International Brotherhood of Electrical Workers, AFL–CIO, White Plains, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

Thomas E. Quigley, Esq., for the General Counsel.
Norman Rothfeld, Esq., for the Respondent.
Michael Connor, an Individual.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. This case was tried in Hartford, Connecticut, on September 28–30, 1999. Wayne Hayward, an individual, filed the charge in Case 34–CB–2179 on May 12, 1998, and amended it on June 3, 1998.[1] The charge in Case 34–CB–2246 was filed by Christopher Kulers, an individual, on November 30. Based on these charges, a consolidated complaint issued on April 29, 1999, alleging that the Respondent, Local Union No. 3 (White Plains), International Brotherhood of Electrical Workers, AFL–CIO, violated Section 8(b)(1)(A) and (2) of the Act in various respects through the operation of an exclusive hiring hall. On May 19, 1999, Michael Conner,[2] an individual, filed the charge in Case 34–CB–2299. A complaint was issued based on this charge on August 10, 1999, alleging that the Respondent violated Section 8(b)(1)(A) and (2) by failing and refusing to register Connor for referral and to refer him for employment through the hiring hall. The two complaints were ordered consolidated for trial.

Respondent filed timely answers to the complaints denying the commission of any unfair labor practices and asserting, affirmatively, that the case was moot because the Respondent no longer operates the hiring hall which was the subject of the complaint allegations. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The New York City Chapter, Westchester-Fairfield Section, N.E.C.A., Inc. (NECA), is an organization composed of employers in the electrical construction industry which exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Respondent. The employer-members of NECA annually purchase and receive for use within the State of New York goods and materials valued in excess of $50,000 directly from points outside the State of New York. By failing to specifically answer these complaint allegations, the Respondent has effectively admitted them.[3] Accordingly, I find that NECA and its members are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I find further, based on the Respondent's failure to specifically answer the complaint allegation, that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent represents journeymen and apprentice electricians throughout the New York City metropolitan area. Since 1943, a nonexclusive Joint Industry Board has administered the employment plan for contractors working in Respondent's original geographic jurisdiction. In 1993, Local 501 of the IBEW, which had previously represented the electricians in Westchester County, New York, and Fairfield County, Connecticut, was merged into the Respondent. Local 501 had operated an exclusive hiring hall in White Plains, New York, under its collective-bargaining agreements with the Westchester-Fairfield Section of NECA for many years prior to the merger. The Respondent continued to operate the exclusive hall after the merger and continued to negotiate a separate collective-bargaining agreement with NECA covering Westchester and Fairfield Counties. Effective August 4, 1999, under the terms of a new collective-bargaining agreement between the Respondent and NECA, the exclusive hiring hall in White Plains ceased to exist and responsibility for administering employment of electricians in Westchester and Fairfield Counties was transferred to the nonexclusive Joint Industry Board. The allegations of the complaint deal with the Respondent's operation of the exclusive hall under its previous collective-bargaining agreement with the Westchester-Fairfield Section of NECA, which was effective for the period May 29, 1996, to May 26, 1999.

[1] The General Counsel and the Respondent have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[1] All dates are in 1998 unless otherwise indicated.

[2] The Charging Party's name appears as corrected at the hearing.

[3] See Sec. 102.20 of the Board's Rules and Regulations.

Article VII of the 1996–1999 collective-bargaining agreement sets forth the referral procedure agreed to by the Respondent and NECA and provides, in pertinent part, as follows:

> Section 7.04. The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the Union and such selection shall not be affected in any way by rules, regulations, bylaws, constitutional provisions or any other aspect or obligation of Union membership policies or requirements. All such selection shall be in accord with the following procedures.
>
> Section 7.05. The Union shall maintain a register of applicants for employment established on the basis of the Groups listed below. Each applicant for employment shall be registered in the highest priority Group for which he/she qualifies.
>
> Journeyperson Wireperson
> Journeyperson Technician
>
> Group I. All applicants for employment who have four or more years' experience in the trade, are residents of the geographic area constituting the normal construction labor market, have passed a Journeyperson Wireperson's examination given by duly constituted Inside Construction Local Union of the IBEW or have been certified as a Journeyperson Wireperson by an Inside Joint Apprenticeship and Training Committee *and* who have been employed for a period of at least one year in the last four years under a collective-bargaining agreement between the parties to this agreement.
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> Group II. All applicants for employment who have four or more years' experience in the trade who have passed a Journeyperson Wireperson's examination given by duly constituted Inside Construction Local Union of the IBEW or have been certified as a Journeyperson Wireperson by an Inside Joint Apprenticeship and Training Committee.
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> Group III. All applicants for employment who have two or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market *and* who have been employed for at least six months in the last three years in the trade under a collective-bargaining agreement between the parties to this agreement.
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> Group IV. All applicants for employment who have worked in the trade for more than one year.

The agreement defines the terms "normal construction labor market," "resident," and "examination" at sections 7.08, 7.09, and 7.10, respectively. Section 7.11 provides that the Respondent "shall maintain an 'Out of Work List' which shall list the applicants within each Group in chronological order of the dates they register their availability for employment" and section 7.12 requires applicants who have registered on the "Out of Work List" to renew their application every 30 days. Failure to do so will result in removal of the applicant's name from the list. Under section 7.15, an applicant who is hired but works 35 hours or less, "through no fault of his/her own," would be restored to his/her appropriate place on the list.

Section 7.14 of the agreement provides that the Respondent "shall refer applicants to the Employer by first referring applicants from Group I, in the order of their place on the 'Out of Work List' and then referring applicants in the same manner successively from the 'Out of Work List' in Group II, then Group III, and then Group IV. Any applicant who is rejected by the Employer shall be returned to his/her appropriate place within his/her group and shall be referred to other employment in accordance with the position of his/her Group and his/her place within the Group." Section 7.15 sets forth three limited exceptions to the above-described order of referral. The collective-bargaining agreement also establishes a three-member appeals committee, comprised of a representative of the Respondent, NECA, and a public member appointed by the other two, to hear and resolve any complaints from employees or applicants regarding the operation of these referral procedures. There is no dispute that the appeals committee has not functioned in recent years. W. Dennard Gore, Respondent's business agent who was the designated referral officer for the White Plains hall, testified that the committee has been dormant because no complaints have been filed.

In addition to these contractual procedures, the Respondent has adopted a set of "Referral Rules," one of which is alleged to violate the Act in several respects. The testimonial and documentary evidence establishes that the most recent set of rules was approved by the Respondent's members at a meeting in August 1994. These rules replaced an earlier set of "Local 501 Referral Procedure Operating Rules." The record establishes that the Respondent sent written notices to its members of the proposed changes on July 22, 1994, approximately 2 weeks before the vote. There is no evidence that NECA ever agreed to the Local 501 rules or the 1994 changes adopted by the Respondent's members.

Among other things, the Referral Rules set forth the process by which applicants register for work, obtain referral numbers, and are placed on the out-of-work list. The rules also describe the procedure for reregistering every month and the procedure for receiving and accepting referrals. These rules also establish procedures for applicants working outside the Respondent's jurisdiction for another Local of the IBEW and for applicants who are sick or disabled. The only one of these rules challenged by the General Counsel is rule 6, which provides as follows:

> Applicants will maintain their position on the "Available for Work" list until they have achieved 20 weeks of employment, only if they are in compliance with the I.B.E.W. Constitution, the Local Union #3 (White Plains) Working Agreement, the Local Union #3 Bylaws and the Local Union #3 (White Plains) Referral Rules. In addition, any termination for cause, voluntary quit, or request for termination, will serve to disqualify an applicant from maintaining an assigned referral number. [Emphasis added].

Rule 6 was added to the rules as part of the 1994 modifications. There is no dispute that the contractual referral procedures and the Respondent's Referral Rules are posted on a bulletin board in the hiring hall next to the "Out of Work List."

The General Counsel alleges that the requirement in rule 6 that applicants comply with the I.B.E.W. Constitution and the Respondent's working agreement, bylaws, and referral rules violates Section 8(b)(1)(A) of the Act. The Respondent does not seriously challenge the General Counsel's contentions with respect to this part of the rule, arguing instead that the issue is

moot because the Respondent rescinded the rule in May 1999 on being advised by the General Counsel that a complaint would issue.

The law is well settled that a union which operates an exclusive hiring hall must not discriminate with respect to registration and referrals on the basis of membership or nonmembership in the Union. See *Sachs Electric Co.,* 248 NLRB 669, 670 (1980). While a union may adopt rules governing the administration of the hiring hall, such rules must not discriminate against applicants based on their membership status. *Boilermakers Local 374 (Combustion Engineering),* 284 NLRB 1382, 1383 (1987), enfd. 852 F.2d 1353 (D.C. Cir. 1988). Moreover, the Board has held that rules restricting members' rights to resign and/or imposing postresignation membership obligations violate Section 8(b)(1)(A) because they restrain and coerce employees in the exercise of their right to refrain from joining or remaining a member of the union. *Operating Engineers Local 399 (Tribune Properties),* 304 NLRB 439 (1991). The rule here is discriminatory on its face because it requires all users of the hall, member and nonmember alike, to adhere to the Respondent's internal rules as a condition to maintaining their place on the list. The Respondent's maintenance of this provision thus violated Section 8(b)(1)(A) of the Act. The requirement that applicants comply with the Respondent's collective-bargaining agreement with NECA and its referral rules, however, does not impose membership obligations on nonmembers. A requirement that applicants abide by the contract under which they work and the rules governing the operation of the hiring hall where they obtain work is a reasonable exercise of the Respondent's representative function in administering the contractual hiring procedures. To the extent that the General Counsel alleges that this aspect of the rule is unlawful, I disagree.

The Respondent offered evidence that it deleted the offending provision from rule 6 after being apprised that the rule violated the Act. Although Gore and the Respondent's president testified that notice of this change was posted in the hiring hall, the Charging Parties did not recall seeing any such change. In order to escape liability, a respondent's disavowal of unlawful conduct must be timely, unambiguous, specific in nature to the coercive conduct, and free from other proscribed illegal conduct. Furthermore, there must be adequate publication and assurances given to employees that the respondent will not violate the Act. *Passavant Memorial Area Hospital,* 237 NLRB 138, 138–139 (1978). Accord: *Sam's Club,* 322 NLRB 8, 9 (1996). Although the Respondent may have intended to revoke the rule, and may even have posted a revised version of the referral rules omitting the offending language, no formal notification to the users of the hall explaining the change and assuring them that it's future operation of the hall would be in compliance with the Act was given. Accordingly, the Respondent's effort to remedy this particular unfair labor practice fell short of the requirements of the Act. Moreover, because of the confusing testimony of the Respondent's president regarding the manner in which the rule was changed and posted, I find that the Respondent has not even established that it in fact effectuated a change in the rules.

The complaint alleges that the Respondent also violated the Act by posting the out-of-work list without listing the names of applicants. Christopher Kulers, one of the Charging Parties and a longtime member of the Respondent and its predecessor Local 501, testified that, in May 1998, when he went to the hiring hall to reregister following a layoff, he observed that the posted out-of-work list did not contain any names, only referral numbers. Kulers had been working for almost a year and had not seen the list for some time. He questioned Business Agent Paul Ryan about this. Ryan told Kulers that the Respondent had removed the names because contractors were coming down and picking men off the list. Kulers did not pursue the issue further at that time. In November 1998, after being laid off from another job, Kulers went to the hall and again observed that the list contained only referral numbers. This time Gore, the Respondent's referral officer, was there and Kulers spoke to Gore about it. According to Kulers, Gore had the list with names behind the referral window. When Kulers asked if he could see it, Gore told him he could look at the list on the wall. Kulers conceded on cross-examination that this occurred during the time of day when Gore was busy dispatching people and that Gore told him he could make a written request to look at the book after 10 a.m. Kulers also testified, on cross-examination, that he "might have" taken the book from Gore and looked at it. According to Kulers, he needed to see the names so he could monitor the operation of the hall, to ensure that referrals were being fairly made. The Respondent's counsel elicited testimony from Kulers on cross-examination that Kulers would often look at the list with a pad in his hand and copy down who was on the list.

Gore admitted that, for a period of time beginning sometime in 1998 and continuing until issuance of the instant complaint, the out-of-work list posted in the hall did not contain names of applicants, only their numbers. Gore also admitted that Kulers asked to look at the book containing the names and that he told Kulers that he did not want him to look at the book because he was in the middle of making referrals. According to Gore, he told Kulers that he could look at the list on the board, i.e., the list without names. Gore recalled further that Kulers made his request while he was signing the book himself and that he took the book and looked at it after he finished signing. Gore explained that the Respondent started posting the list without names because contractors and their representatives were coming into the hall to see who was at the top of the list before making a request for employees. If they didn't like the individual at the top, they would delay their request until someone they wanted to hire reached the top of the list. This testimony is consistent with the reason Ryan gave to Kulers in May.

The General Counsel relies on those Board decisions holding that a union violates Section 8(b)(1)(A) of the Act when it "arbitrarily denies a member's request for job referral information, when that request is reasonably directed towards ascertaining whether the member has been fairly treated with respect to obtaining job referrals." *Boilermakers Local 197 (Northeastern State Boilermaker Employers),* 318 NLRB 205 (1995). Accord: *Operating Engineers Local 3 (Kiewit Pacific Co.),* 324 NLRB 14 fn. 1 (1997). In the instant case, the General Counsel has failed to prove that the Respondent "arbitrarily" denied Kulers request for information or that it otherwise withheld from employees any information regarding the operation of the hiring hall. As noted above, Kulers admitted that he asked to look at the book during the time of day when Gore was busy dispatching employees. Kulers acknowledged that he was told he could see the book at another time. Moreover, although the posted out-of-work list only contained the applicants' referral numbers, it is undisputed that the books in which applicants registered contained their names and num-

bers and that these books were available for review and inspection at times other than when they were being used by the referral officer for dispatch purposes. Thus, Kulers and other users of the hall had ample opportunity to review this information if they believed they were being treated unfairly with respect to obtaining job referrals.

I find further that the Respondent had a legitimate reason for omitting names from the posted out-of-work list. In this regard, I credit Gore's testimony that the Union started posting the list with only the applicants' referral numbers because of the practice of some contractors of "cherrypicking" off the list. I note that Gore's testimony is consistent with the reason Kulers was given by Business Agent Ryan at a time before any unfair labor practice charges were filed. A union that operates an exclusive hiring hall has a legitimate interest in ensuring that work opportunities are available to all registrants and that employers do not circumvent the hiring hall procedure in order to favor some employees over others. The General Counsel has thus failed to establish that the Union's practice of posting the out-of-work list without the names of applicants was "arbitrary, discriminatory or in bad faith." See *Plumbers Local 342 (Contra Costa Electric),* 329 NLRB 688 (1999). Accordingly, I shall recommend dismissal of this allegation of the complaint.

Under rule 6 of the Respondent's Referral Rules, discussed above, "any termination for cause, voluntary quit, or request for termination, will serve to disqualify an applicant from maintaining an assigned referral number." The evidence reveals that the Union enforces this rule by requiring employees who receive "bad lay-offs," i.e., terminations other than those which are part of a reduction in force, to appear before a "referral review committee" made up of journeymen wiremen. Gore, the Respondent's referral officer, is not a member of this committee but serves essentially as its secretary by issuing the letters to employees requiring them to attend the meetings and occasionally taking notes at the meetings. The General Counsel alleges that the Respondent's maintenance and enforcement of this rule and the operation of the referral review committee, in particular its application to Charging Parties Kulers and Wayne Hayward, violated Section 8(b)(1)(A) and (2) of the Act.

Hayward, a member of the Respondent for 10 years and a journeyman since August 1997, testified that he was terminated by Stan Electric on November 29, 1997, a Saturday. Hayward had worked on this job for 10 days and had been having problems with the foreman, John Magnotta, from the first day. At the time of his termination, the foreman simply told him to pack up his tools and go back to the hall. He was not given a reason for his termination until he received the notice of termination in the mail. The reason given on this form was: "Refuse to cooperate with foreman. Out of work Area." Hayward testified that he went to the hiring hall on Monday, December 1, 1997, and told Gore what had happened. Hayward told Gore that he wanted to take some action. Gore asked if Hayward wanted to file charges against the foreman and Hayward said yes. Gore then asked if Hayward wanted to go before the referral committee and Hayward again said yes. Hayward had not heard of the referral committee before. Hayward attended a meeting of the referral committee on December 9, 1997. Gore was present with the five journeymen members of the Respondent who comprised the committee. According to Hayward, no one appeared to be in charge. He was asked to give his side. Hayward told the committee that he had asked for safety goggles on the job and had not been given them and that there was no steward on the job even though there were 50 electricians working there. He told the committee that he wanted to file charges against Magnotta, the foreman, and Rick Patrick, the superintendent on the job, who were also members of the Respondent, for violating the constitution and the collective-bargaining agreement.[4] Hayward had brought witnesses with him, but was told by the committee that they didn't need to hear his witnesses. Hayward asked where were his accusers and why wasn't Rick Patrick, the superintendent there? He was told that the committee already heard their side and now wanted to hear Hayward's side. According to Hayward, the meeting ended with the committee telling him he was wrong, but that he would be returned to the out-of-work list with the same number he had before. Although Hayward did not receive any referrals between the date he was terminated and the date he appeared before the committee, the General Counsel offered no evidence that others with higher numbers were referred during that time. Hayward was referred to work on December 15, 1997.

On May 11, Hayward was again terminated by an employer, Fairfield Electric. This termination resulted from an incident before the start of the workday in the parking garage at the job site. Hayward admittedly had a verbal confrontation with a woman who turned out to be an employee of the contractor's customer after she tailgated him in the garage. His notice of termination stated the reason as "abusive language directed to customer." Hayward testified that he went to the hiring hall within a day of his termination and spoke to Gore. Hayward told Gore he didn't feel the incident warranted a bad layoff. Gore agreed with the contractor and told Hayward he would send the matter to the referral committee. Hayward signed the book and was given a new referral number on May 12.[5] A few days later, he received a written notice to appear before the referral review committee on June 3.

Hayward attended the June 3 meeting with Gore and the same members of the committee. He was again asked to give his side of the story. He described the incident for the committee. Hayward told the committee that, although he could understand the contractor wanting to terminate him, he did not believe a misconduct termination was warranted because the incident occurred offsite and off company time. According to Hayward, Gore sided with the contractor and said that it was getting to the point he was going to have to tell his boss that Hayward would no longer be able to be hired.[6] Nevertheless, Gore told Hayward to call the referral phone line the next day to find out when he would be going back to work. Hayward

[4] Hayward did file charges against Magnotta and Patrick on December 10, 1997, the day after this meeting. Although the Respondent determined that these charges were not warranted on December 22, 1997, Hayward did not receive notice of this action until January 22, 1999, after Hayward made two inquiries regarding the status of his charges.

[5] It is unclear from the record whether Hayward was given a new number because of his termination or because he had "achieved 20 weeks of employment" by the date of his termination.

[6] The record reveals that even before his termination by Stan Electric, another employer, Ducci Electric, had rejected the Respondent's referral of Hayward in October 1997 based on the results of a preemployment urine test.

then asked what happened to the charges he had filed against the foreman and superintendent at Stan Electric, since he had not heard anything yet. Hayward did not testify to any response to this inquiry. Hayward also asked what authority the committee had to keep him out of work for 3 weeks. Gore responded "by authority of the Business Manager. It's in the referral procedures." Hayward asked when the members were notified of this rule and Gore told him "3–4 years ago." Hayward said he never received this notice, pointing out that he had been an apprentice at the time. Gore said he should have gotten notice anyway. When Hayward asked for a copy, Gore told him it was posted on the board.[7] After this meeting, Hayward was referred again on June 10. Again, the General Counsel offered no evidence that Hayward missed any work opportunities during the period between his termination and his appearance before the committee.

On July 11 Hayward was terminated again under dubious circumstances, this time by Johnson Electric at a job at the Clairol plant in Stamford, Connecticut. When Hayward returned to the hiring hall with his termination notice, he was directed to appear before the referral review committee on July 15. Hayward signed the book with the same number he had before his referral to Johnson Electric. The termination notice from this job listed a number of alleged acts of misconduct which Hayward disputed at the hearing and before the committee. Hayward contended that the employer, an out-of-town contractor, trumped up charges against him in order to get rid of local electricians and keep its regular crew working. One other employee who had been referred out of the Respondent's hall was terminated the same day, for absenteeism. At the referral review committee meeting on July 15, Hayward was asked to give his side regarding his termination. According to Hayward, the committee also had letters from two foremen on the job supporting Hayward. The meeting ended with Hayward being told to call the referral line. Hayward did and was referred out the next day. Again, there is no evidence that others were referred ahead of Hayward during the period between his termination and his appearance before the committee.

The job Hayward was referred to on July 16 was with Eastern Electric. Hayward was laid off about a month later for "non-production," which Hayward believed was a bad layoff. Instead of being called before the committee, Hayward met with Gore after protesting his layoff to the job superintendent and owner of the company. The day after he was terminated, Hayward participated in a conference call with Gore and representatives of Eastern Electric during which his termination was discussed. At the end of the call, Gore told Hayward, "[D]on't worry, come down to the hall and we'll have another job for you." Hayward was almost immediately referred to another job which he held until the job was complete. From there, Hayward was referred to a second shift job with a contractor called Jansco in Stamford, Connecticut. Kulers was also working on this job.

The circumstances surrounding Hayward's termination from the Jansco job were murky at best. Hayward testified that he spoke to the owner of the company, Dominic Sanseverino, shortly after he was transferred to first shift. Hayward asked if he could be laid off if there was a layoff coming up and his work was done. According to Hayward, Sanseverino replied that he had Hayward's money but he needed the work done before he could let Hayward go. He told Hayward that the only way he could let Hayward go otherwise was as a voluntary quit. Hayward testified that he and Sanseverino agreed that he would stay and finish the work he was doing and that he would then receive a reduction in force (RIF) layoff. He recalled that he worked about another 10 days and received the RIF layoff notice on November 5. On cross-examination, while denying that he asked for his paycheck and a pink slip, Hayward admitted that Sanseverino told him he would not lay him off because he needed him. Kulers also testified about the circumstances leading up to Hayward's layoff. According to Kulers, Sanseverino approached him in an agitated state, telling Kulers that Hayward had asked to be laid off. Sanseverino told Kulers that he did not want to lay off Hayward because he would not be able to get more men to finish the job and he did not want to give Hayward a bad layoff. Kulers offered to talk to Hayward. According to Kulers, he was able to convince Hayward to stay and finish the work he was doing and Sanseverino thanked him for his efforts. Curiously, Hayward did not corroborate Kulers, nor even mention his involvement in the events leading up to his layoff.

Hayward testified further that, after he was laid off by Jansco, he went to the hall with his layoff slip to register for work. Gore reacted to the layoff slip with surprise, telling Hayward that he had just sent two men to work for Jansco. Gore questioned whether Hayward's layoff was really a RIF and told Hayward that he would have to call Sanseverino about it. Hayward signed the list that day, November 6. On November 13, he received a letter from Gore directing him to appear yet again before the committee. Hayward called Gore and asked him what this was all about. Gore told Hayward that he spoke to Sanseverino and was not satisfied with the explanation he got and that he wanted the matter to go before the committee. The meeting was scheduled for November 18. Hayward told Gore that he could not attend the meeting. He did not give Gore a reason. It is undisputed that Hayward was unavailable for work from November 13 until December 12. During this time, he reregistered as required by the contract and referral rules by submitting an absentee card on December 2. In addition, he wrote a letter to the Union on November 29 questioning Gore's authority to call him before the committee. The Respondent's attorney responded by letter on December 28, explaining the reason that Hayward was requested to appear before the committee, i.e., the Respondent's belief that he had requested the layoff. The attorney concluded the letter by advising Hayward that the Respondent would not process his application for referral unless and until he met with the committee.

Hayward returned to the hiring hall on January 4, 1999, and spoke to Gore. Gore told Hayward that he had to appear before the next referral committee meeting on January 13, 1999, before he could be referred. On January 7 or 9, 1999, Hayward received a call from Gore offering him a referral if he would agree to go to the meeting with the committee on January 13. Hayward agreed and was referred out to a job with Healy Electric. He attended the committee's meeting on January 13, 1999, and asked the committee why he was there. Hayward was asked what happened on the job. He told them nothing happened, he got a reduction-in-force layoff. Hayward was then shown a letter from Sanseverino in which Sanseverino stated that Hayward showed up for work at 12:30 on October

[7] The Respondent's minutes of this meeting are consistent with Hayward's testimony.

31, i.e., 4-1/2 hours late, expecting to get his paycheck and a pink slip because another employee had been laid off the same day.[8] Sanseverino, in his letter to the Union, explained that he did not want to lay off Hayward that day because he was in the middle of a particular assignment that needed to be completed. Sanseverino reported telling Hayward that if he wanted to be let go, it would have to be a voluntary quit and that Hayward told Sanseverino that he wanted to be let go as soon as he completed his assignment. Sanseverino further advised the Respondent in his letter that he placed a call for two more men rather than use the employees he had on the job because of their poor attitude after he refused to give Hayward a reduction-in-force layoff on October 31. In response to this letter, Hayward told the committee that he had volunteered for the layoff because he knew the job was winding down, he was living at home, and he felt that other employees with mortgages could use the work or, as Hayward described his motive, it was the "brotherly" thing to do. Hayward was already working at the time of the meeting. He testified that he has not been called before the committee since that meeting. There is no evidence in the record that Hayward has received any further "bad lay-offs" since his termination from Jansco. As noted above, the General Counsel conceded that Hayward was unavailable from November 13 through December 12. The General Counsel offered no evidence that Hayward was passed over for any referrals between November 5, when he was laid off and November 13, when he became unavailable, or between December 12 and January 7, 1999, when he was offered the referral to Healy Electric.

Charging Party Kulers was also summoned to appear before the referral review committee, by letter dated January 14, 1999. He admitted being aware of the committee's existence from other members who had been called before it. On January 14, 1999, Kulers had received a referral to a job with GFI Electric in Greenwich, Connecticut. According to Kulers, it was snowing that morning and the roads were bad. It took him 1 hour to get from the hiring hall in White Plains to the job. When he got there, another employee who had been referred the same day was already there. Kulers sought out the foreman, David Hoyt, and told him that the roads were bad, he was having car trouble, and he could not start that day. Kulers told Hoyt he could start the next day. Kulers admitted that Hoyt told him he needed Kulers that day. Kulers repeated that he could not start that day, but would start the next. According to Kulers, Hoyt responded by saying, "[D]o what you got to do." Kulers drove home and was told when he got there that GFI had called and left a message telling him not to report for work the next day, that he was discharged. On cross-examination, Kulers admitted that he was not alone when he reported to the GFI job. His friend, James Stemerman, was in the car with him. Although Kulers denied that this had anything to do with his refusal to start work that day, he had no explanation for what he would have done with his friend had he remained and worked all day. His answers to counsel's questions on cross-examination were frequently evasive and argumentative. As a result, I was not generally impressed with Kulers' credibility.

Hoyt, the foreman, testified as a witness for the Respondent. Hoyt belongs to a different local of the IBEW and is not a member of the Respondent. According to Hoyt, GFI had requested employees from the Respondent's hiring hall to prepare for an inspection scheduled for the following Monday. The Respondent referred Kulers and one other employee. Hoyt testified that when Kulers arrived on the job, he told Hoyt that he had things to do that day and could not start until the next day. According to Hoyt, Kulers said nothing about the weather or car trouble. Newspaper reports from that date corroborate Hoyt's testimony that it was raining, not snowing, in Greenwich at the time Kulers reported to the jobsite. Hoyt reported the incident to his boss and obtained the needed manpower to finish the work from his own local rather than the Respondent. I credit Hoyt's testimony over that of Kulers because I found Hoyt's description of events more plausible.

After receiving the message from GFI that he had been discharged, Kulers called the hiring hall and spoke to Gore. Gore told him he had already heard about it. Gore told Kulers that he would have to go before the committee. Kulers told Gore he was available for work and asked if Gore was going to refer him. Gore repeated that Kulers had to meet with the committee. Kulers told Gore that he would not meet with the committee. Kulers next received the January 14, 1999 letter, directing him to appear before the committee on January 20, 1999. As instructed in the letter, Kulers called the Respondent's office and told the secretary the day before the meeting that he would not be attending.

Kulers testified further that, sometime before January 20, 1999, after he called the referral line and heard numbers higher than his being referred to work, he went to the hall and spoke to Gore. He told Gore that there must have been an oversight because his number wasn't called. Gore became agitated and told Kulers that if he had anything to say to him, to put it in writing. Kulers told Gore that he was available for work and asked Gore if he was going to refer him out. Gore again told Kulers to put anything he had to say in writing. The next communication he received from the Respondent was a letter dated January 28, 1999, from the Respondent's attorney. The letter advised Kulers that because he had refused to work for GFI on January 14, 1999, that employer had called another local union to get an employee and had complained to the Respondent. The attorney reiterated Gore's request that Kulers appear before the committee and stated that it was the Respondent's position that, unless and until he met with the committee, he would not be referred.

According to Kulers, Business Agent Mickey Whelan called him in February 1999, after Kulers had been out of work about 4 weeks, and urged him to meet with the committee. Kulers told Whelan that he did not recognize the authority of the committee. Whelan suggested he go before the committee and challenge its authority later. He told Kulers that he was concerned about money Kulers was losing by not working. Kulers told Whelan that if he was so concerned, to put him back on the list. Kulers testified that Whelan called him again about 2 weeks later and asked if he wanted to go to work. Kulers said he did. Whelan told him to come to the hall and pick up a referral slip. When Kulers inquired about his referral number, he was told that it had been changed by the committee. The next day, March 2, 1999, Kulers went to the hall and was referred out to a job with Modern Electric in Thornwood, New York. Kulers was not called before the committee again and worked continuously until the hiring hall ceased operations in August 1999. The General Counsel showed, through referral slips, that other applicants with numbers higher than the number Kulers

[8] On cross-examination, Hayward confirmed that he arrived for work 4-1/2 hours late on October 31.

had at the time of his refusal to work at GFI were referred to employment during February 1999.

The General Counsel also offered evidence that one other member of the Respondent, Anton Pavlicheck, was given a new, higher, referral number after a meeting with the referral review committee in May 1998. Gore conceded that this was done as "punishment" after a difficult meeting. According to Gore, Pavlicheck had been called before the committee after refusing two referrals. The meeting was "difficult" because Pavlicheck was angry. General Counsel also offered evidence that at least one employee who quit a job, Joseph Conroy, was not called before the committee. His termination slip indicates that he quit on February 19, 1999, because he was leaving town. The record reveals that he was referred to another job a week later. Gore testified that no employee has been directed to appear before the committee for quitting a job to leave town.

The Respondent's president, McSpedon, and Gore testified that the Respondent adopted rule 6 in response to problems it encountered organizing nonsignatory contractors in the jurisdiction of the Respondent's White Plains chapter. Contractors frequently told representatives of the Respondent that they did not want to use its hiring hall because they were not satisfied with the performance and attitude of applicants referred from the hall. The facts regarding Hayward's multiple terminations within his first year as a journeyman and Kulers' refusal to work when referred to the job in Greenwich tend to corroborate the testimony of the Respondent's witnesses in this regard. Significantly, Kulers' testimony that employees were free to quit a job at will or ask for a layoff, even when work was available, displays an attitude not conducive to productive employment. The rule under which the referral review committee was established was intended to address the contractors' concerns by providing a forum for the Respondent to look into why employees were getting bad layoffs. According to Gore, an employee receiving such a layoff, or voluntarily quitting a job, would be asked to meet with a panel of his peers before being referred again as a form of counseling. The record establishes that Hayward and Gore were not the only applicants to be called before the committee. Gore testified, however, that Kulers was the first to refuse to meet with the committee. The Respondent did not dispute the testimony of Hayward regarding what transpired at his four meetings with the referral review committee. In addition, Gore admitted that employees who are directed to appear before the committee are not eligible for referrals until they meet with the committee. Gore further admitted that Kulers' name was taken off the out-of-work list after he failed to attend the committee's January 20, 1999 meeting. The evidence in the record shows that Kulers name was returned to the list with a new number on February 11, 1999. Gore testified that this was done after the committee met again and decided to restore Kulers to the list.

The complaint contains several allegations related to the operation of the referral review committee. In paragraph 8, the General Counsel alleges generally that the Respondent has operated the hiring hall since December 1997 arbitrarily and without reference to published objective criteria and standards. The General Counsel argued specifically at the hearing that this allegation was based on the claim that the Respondent had no established procedures governing the referral review committee and that Gore was arbitrary in his decisions with respect to when an employee would be referred to the committee. Paragraph 10 specifically alleges that the Respondent's maintenance and enforcement of the referral review committee effectively denied work to unit employees arbitrarily and without reference to published objective criteria and standards in violation of Section 8(b)(1)(A) and (2). Finally, in paragraphs 12 through 15, the General Counsel alleges that Hayward and Kulers were unlawfully denied work during specified periods of time as a result of their being required to appear before the referral review committee. As noted above, the Respondent contends that the issue is moot because it no longer operates an exclusive hiring hall. The Respondent argues further that the disputed rule 6 and the referral review committee were a lawful exercise of the Respondent's discretion in carrying out its representative duties as administrator of the contractual hiring hall.

Judge Clifford Anderson succinctly summarized the law with respect to a union's operation of an exclusive hiring hall in the following language from his decision in *Electrical Workers Local 6 (San Francisco Electrical Contractors)*,[9] which was adopted by the Board:

> The union operating a hiring hall owes referral applicants a duty of fair representation and is obligated to operate the hiring hall in a manner free from any arbitrary or invidious considerations . . . . A union's obligations applies (sic) to all rules and procedures governing hiring hall operations. Such rules may not be arbitrarily or discriminatorily applied against individuals who are not members of the particular local union operating the hiring hallThe Board does not require that hiring hall rules and procedures be written . . . . Nor need referral rules, absent a contractual requirement, be posted or incorporated in a contract . . . . Rather the Board requires . . . . that the contractual provisions and referral rules be followed and that objective criteria be utilized . . . . A union which operates a hiring hall without such objective criteria violates the Act.
>
> Hiring hall rules may be changed by a union . . . . Timely notice of such changes must be made of changes in hiring hall rules and practices to all hiring hall users . . . . Further a union is obligated to supply information about the hiring hall procedures and particular individuals' places on the register upon request.

318 NLRB supra at 124 (citations omitted).

The Board recently reaffirmed the principal that the duty of fair representation applies to a union's operation of an exclusive hiring hall and that this duty is breached only by conduct toward a unit employee that is "arbitrary, discriminatory or in bad faith." *Plumbers Local 342 (Contra Costa Electric),* 329 NLRB 688 (1999). The Board rejected the notion that a union is held to a higher standard with respect to its hiring hall activities than that governing its other activities. In *Contra Costa Electric,* the Board specifically held that a negligent failure to refer an applicant did not violate Section 8(b)(1)(A) and (2) of the Act, over ruling contrary precedent. Although the Board's holding was a narrow one, the language of the decision and the Board's citation to the Supreme Court's decisions in two cases[10] provide guidance to resolving the issue in the instant

[9] 318 NLRB 109, 124 (1995).

[10] *Steelworkers v. Rawson*, 495 U.S. 362 (1990), and *Air Line Pilots Assn. v. O'Neill,* 499 U.S. 65 (1991).

case. In particular, the Board questioned the validity of its prior holding in *Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corp.),*[11] relied on by the General Counsel here. In that case, the Board held that *any* departure from established procedures which results in the denial of employment to an applicant falls within the class of discrimination which inherently encourages union membership and breaches the duty of fair representation owed to all users of the hiring hall. To rebut this presumption, a union was required to demonstrate that its interference with employment opportunities was pursuant to a valid union-security clause or was necessary to the effective performance of its representative functions. In *Contra Costa Electric,* the Board suggested that a breach of the duty of fair representation would be found where there is a deliberate, volitional departure from established procedures or evidence of gross negligence indicating a disregard for established procedures. The Board appears to have adopted the Supreme Court's definition of "arbitrary," as set forth in *O'Neill,* i.e., behavior that is so far outside a wide range of reasonableness as to be irrational.

In the present case, the evidence shows that the Respondent did have established procedures for the operation of its hiring hall in White Plains. These procedures were contained in the collective-bargaining agreement and its referral rules adopted by the Respondent's members. I do not agree with the General Counsel that the rules were a departure from the established contractual procedures. On the contrary, they were a supplement to these procedures which spelled out in detail how the contractual hiring hall would be operated. With the exception of that portion of rule 6 found unlawful above, nothing in the rules conflicted with the language of the contract requiring the Respondent to refer applicants on a nondiscriminatory basis in accordance with classifications spelled out in the contract. In particular, the rule disqualifying an applicant from maintaining his place on the list in the event of a termination for cause, voluntary quit, or request for termination, advanced the legitimate interests of the Respondent and the signatory employers in preventing applicants from circumventing the hiring hall by picking and choosing their employment and ensuring continued use of the hiring hall by contractors. The Board has in the past upheld a union's nondiscriminatory hiring hall rules which serve such purposes. See *Boilermakers Local 40 (Envirotech Corp.),* 266 NLRB 432 (1983). Cf. *Boilermakers Local 667 (Union Boiler Co.),* 242 NLRB 1153, 1155 (1979) (While conceding the union's legitimate interest in having a rule penalizing applicants who quit jobs to which they are referred, the Board found a violation on the basis that the rule was not publicized to applicants). In the present case, the disputed rule was not only posted in the hiring hall for all applicants to see, but had been voted on by members of the Respondent who used the hall, after due notice regarding the proposed rule changes. Under these circumstances, I do not agree with the General Counsel that the maintenance and enforcement of this aspect of Rule 6 was unlawful.

I also do not agree with the General Counsel that the Respondent's enforcement of this rule through the operation of the referral review committee breached the Union's duty of fair representation or unlawfully discriminated against applicants for employment. The General Counsel has offered no evidence that the Respondent used the committee as a device to deny employment to nonmembers or union dissidents. On the contrary, the evidence in the record establishes that the committee was invoked in response to information received by the Respondent indicating an employee had been fired for cause or voluntarily quit employment. Hayward and Kulers were not singled out because of their status as members or nonmembers, nor in retaliation for their exercise of any statutorily protected right. They were directed to meet with the committee because their employment was terminated for one of the reasons specified in rule 6. As noted above, the Respondent has a legitimate interest in ensuring that contractors continue to use the hall or that employees do not unfairly circumvent the hiring hall by quitting one job to take another. As is evident from the facts in this case, employees like Kulers and Hayward who are willing to abandon employment before their job is done adversely affects other users of the hall because employers will be reluctant to rely on the Respondent as a source of labor if it cannot count on employees referred from the hall to stay until the work is done. To the extent there is any credibility dispute on this issue, I credit the testimony of Gore and McSpedon and find that the Union's use of the referral review committee to enforce rule 6 was necessary to the effective performance of its representative functions.

The General Counsel argues that Gore was arbitrary with regard to his selection of employees to meet with the referral review committee to the extent that applicants and employees were left with little guidance in determining when they would be subject to rule 6. I disagree. Rule 6 is clear and unambiguous on its face. It provides that "any termination for cause, voluntary quit, or request for termination" would subject an employee to losing his place on the out-of-work list. Because the members themselves approved of this rule and the rule was posted in the hiring hall for all users to see, it can hardly be said that applicants were not on notice regarding the type of conduct which would cause them to be directed to appear before the committee. The evidence offered by the General Counsel showing isolated cases where an employee quit or was terminated for cause and was not required to appear before the committee is insufficient to establish that the Union's conduct was "so far outside a wide range of reasonableness as to be irrational." *Air Line Pilots Assn. v. O'Neill,* supra 499 U.S. at 78. The General Counsel has not shown that Gore's decision to call Hayward and Kulers before the referral review committee was motivated by "hostile, invidious, irrelevant, or unfair considerations" or was anything other than the good faith exercise of his discretion as the referral officer. See *Plumbers Local 40 (Mechanical Contractors Assoc. of Washington),* 242 NLRB 1157, 1163 (1979). On the contrary, the testimony of Hayward himself, the reports and correspondence Gore received from the respective employers and the testimony of Hoyt regarding Kulers' refusal to work on January 14, 1999, provided ample justification for application of rule 6 to Hayward and Kulers.

As noted above, the General Counsel failed to prove that Hayward in fact lost work as a result of the four times he was required to appear before the committee to answer questions regarding his terminations. Although the record does show that Kulers was bypassed for referrals during the approximately 6-week period that he refused to appear before the committee, I find that this was the result of the Respondent's good-faith application of a reasonable hiring hall rule of which all users of the hall had at least constructive notice. Moreover, in

[11] 262 NLRB 50 (1982).

Kulers' case, the evidence establishes that he had actual notice of the rule. Thus, Kulers acknowledged receiving notice of the August 1994 meeting at which rule 6 was adopted by the Respondent's members. Accordingly, I find that the Respondent did not violate Section 8(b)(1(A) or 8(b)(2) by either the maintenance and enforcement of rule 6 or its application to Hayward and Kulers in 1998 and 1999. I shall thus recommend dismissal of these complaint allegations.

Finally, the complaint alleges that the Respondent violated Section 8(b)(1)(A) and (2) by failing and refusing to register Conner on the out-of-work list and to refer him for employment because he was not a member of the Respondent. The facts regarding this allegation are not in dispute. Conner testified that he went to the Respondent's hiring hall on or about March 26, 1999, seeking to register for book 2. under the collective-bargaining agreement, conner qualified for book 2 because he had 4 or more years experience in the trade and had been certified as a journeyman wireman by a recognized Joint Apprenticeship and Training Committee. Conner was not a member of any union at the time he sought to register although he had been a member of Local 363 of the IBEW until August 1998. According to Conner, when he went to the referral window and asked to sign book 2, Gore asked him what local he was from and if he had a dues receipt. Conner told Gore that he was not a member of the Union at the time but that he had his credentials. He then showed Gore his credentials establishing his status as a certified journeyman. Gore told Conner that there was no work for book 2 but that there was M-rated work available.[12] Gore handed Conner a piece of paper to leave his name and phone number if he was interested in such work. Conner filled out the paper. He then asked Gore if he could see book 2. Gore again told Conner that there was no work for book 2 and that he didn't see any coming up in the near future. He told Conner that, even if there was work for book 2, he would have to give it to Local 3 members from New York City. Conner again asked to see Book 2 to see if any Local 3 members had signed it. Gore refused to let him see book 2. Conner gave the form with his name and phone number to Gore and Gore told him he would call if there was any M-rated work. Conner then left the hall.

Conner testified that he returned to the Respondent's hiring hall about 2 weeks later, on or about April 9, 1999, and again asked to sign book 2. This time, Gore was not there and Conner spoke to Business Agent Ryan. Ryan told Conner that he would have to return when Gore was there and discuss it with him. Conner asked Ryan if he could see book 2 and Ryan refused. According to Conner, Ryan was getting "antsy," so Conner left to avoid any troubles. Although Conner acknowledged being called by the Respondent's attorney and offered M-rated work after he filed his unfair labor practice charge, he has not been offered any book 2 work, nor has he been permitted to sign book 2. Gore testified that he first opened Book 2 to make referrals in mid-May 1999.

Although Gore disputed some of Conner's testimony regarding their meeting on March 26, 1999, he did not dispute the testimony that he refused to let Conner sign or see book 2. According to Gore, he told Conner that he had to research his "reciprocation papers" because Conner was not a member of any local. Gore testified that he also told Conner that there was no work available for book 2. The issue with respect to "reciprocation" is the process by which the Respondent sends fringe benefit contributions to the home local of travelers working within the Respondent's jurisdiction. Gore testified that he had never been faced with a request by someone who did not belong to any local union to sign a book and he did not know where to send the fringes if Conner were to be referred from the Respondent's hall. Gore testified further that, in doing his subsequent "research," he obtained information from Conner's former local union indicating that Conner was involved in "litigation" with that union. Gore also testified that when he first opened book 2, in mid-May 1999, he called Conner's former local to try to locate Conner and was told by the Business Agent there that Conner was working at West Point. It appears that Gore made no further effort to contact Conner.

The law is well settled that a union that operates an exclusive hiring hall violates the Act when it refuses to allow a nonmember to sign the highest priority referral list for which they are eligible. *Electrical Workers Local 6 (San Francisco Electrical Contractors),* supra; *Sachs Electric Co.,* supra. Even assuming, as Gore testified, that there was no work available at the time for book 2, it was nevertheless unlawful to deny Conner the opportunity to place his name on the list so that he would be eligible for such work when it became available. Gore's contention that he had to "investigate" Conner's reciprocals does not excuse the refusal to let him sign the book on March 26, 1999. Because there was no work then available, Gore would have plenty of time to resolve this issue before any fringe benefit contributions were made on Conner's behalf. I also find irrelevant the proffered evidence indicating that Conner was in the midst of a legal dispute with his former local at the time he sought to register for work with the Respondent. Nothing in the contract, the Respondent's referral rules, or the Act would permit a denial of access to the hiring hall on such a basis. Accordingly, I find that the Respondent violated the Act as alleged when it failed and refused to register Conner on the out-of-work list on March 26, 1999.

CONCLUSIONS OF LAW

1. The New York City Chapter, Westchester-Fairfield Section, N.E.C.A. and its individual members are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By requiring employees who use its exclusive hiring hall to comply with the Constitution of the International Brotherhood of Electrical Workers and the Respondent's by-laws, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

4. By failing and refusing to register Michael Conner on the out-of-work list on March 26, 1999, and by thereafter refusing to refer him for employment because he was not a member of the Respondent, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

[12] These are jobs, such as residential work, or teledata, work that pay a significantly lower rate. The Union maintains a separate list of employees available for such work. Under the Respondent's hiring hall rules, an employee who accepts M-rated work maintains his place on the regular out-of-work list and can quit the M-rated job when a regular job becomes available.

5. The Respondent has not committed any other unfair labor practices alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In order to remedy the failure to register Conner on the out-of-work list, I shall recommend that the Respondent be ordered to make him whole for any wages and benefits lost as a result of its failure to place his name on the book 2 list effective March 26, 1999. The make-whole remedy shall extend until the date that the Respondent ceased operating its exclusive hiring hall in White Plains pursuant to its current collective-bargaining agreement with NECA. Because the Respondent has already rescinded the unlawful rule requiring hiring hall applicants to comply with internal union rules and because the Respondent no longer operates an exclusive hiring hall, I shall not recommend any prospective relief for this violation. However, I shall recommend a notice posting to ensure all members and employees are aware of their statutory rights and that they have been vindicated through the board's processes. Because the hiring hall is no longer operating, I shall recommend that a copy of the notice be mailed to all registered users of the hall, at their last known address, who were on any of the Respondent's out-of-work lists during the period from December 1, 1997, a date approximately 6 months before the first unfair labor practice charge was filed, until the hiring hall ceased operations.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, Local Union No. 3 (White Plains), International Brotherhood of Electrical Workers, AFL–CIO, White Plains, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining and enforcing a rule requiring applicants who use any exclusive hiring hall operated by the Respondent to comply with the IBEW constitution and the Respondent's by-laws in order to maintain their place on the out-of-work list.

(b) Failing and refusing to register any applicant on the highest priority out-of-work list for which they are eligible and refusing to refer an applicant because they are not a member of the Respondent.

(c). In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Michael Conner whole, with interest, for all wages and benefits he lost as a result of the Respondent's failure and refusal to register him in book 2 for the period from March 26, 1999, until the Respondent ceased operating its White Plains hiring hall.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all hiring hall records, referral slips, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its union office and hiring hall in White Plains, New York copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix"[15] to all users of the hiring hall previously operated by the Respondent under its collective-bargaining agreement with the New York City Chapter, Westchester-Fairfield Section, N.E.C.A. who were registered on the out-of-work list at any time from December 1, 1997 until the Respondent ceased operation of the hiring hall. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain and enforce any rules requiring applicants who use any exclusive hiring hall operated by us to comply with the IBEW constitution and our by-laws in order to maintain their place on the out-of-work list.

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[15] See fn. 14, supra.

WE WILL NOT fail and refuse to register any applicant on the highest priority out-of-work list for which they are eligible and refuse to refer them for employment because they are not a member of the our union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Michael Conner whole, with interest, for all wages and benefits he lost as a result of the our failure and refusal to register him in book 2 for the period from March 26, 1999 until we ceased operating the White Plains hiring hall.

ELECTRICAL WORKERS LOCAL NO. 3
(FAIRFIELD ELECTRIC, INC.)